

CABINET

Agenda Item: 9

Ward: Frome College

Portfolio: Governance, Assets and Public Spaces

Report Author(s): Cllr Parham-
Governance Assets and
Public Spaces Portfolio
Holder

Meeting Date: 14 October 2013

SUBJECT: Potential asset transfer at Frome Showfield site to Frome Town Council

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Report Sign off	Seen by:	Name	Date
	Legal	Martin Evans	2 Oct 2013
	Finance	Adam Savery	3 Oct 2013
	Procurement	N/A	
	Corporate Manager	Donna Nolan	2 Oct 2013
	Portfolio Holder	Cllr John Parham	3 Oct 2013
	Ward Member(s)	Cllr Bullen and Cllr Boyden	3 Oct 2013
Summary:	<p>Members are asked to consider the potential assignment of the two leases covering the Frome Showfield site to Frome Town Council to manage and maintain the site under the existing terms and conditions of the leases.</p> <p>In September, the Corporate Asset Management Group supported “in principle” the potential transfer of this site following further interest by Frome Town Council.</p> <p>Frome Town Council has taken a proactive approach to seeking the release of the S106 monies from the development of the health centre. Following public consultation, the Town Council have identified works to enhance the site as a recreational space. The Town Council propose that the majority of these works are funded through Section 106 monies following the development of the health centre on the site. There is no requirement for MDC to make any investment for the assignments to proceed.</p>		
Recommendation:	<p>It is recommended that members agree to the assignment of both leases to Frome Town Council and;</p> <ol style="list-style-type: none"> 1. To delegate authority to the Corporate Manager Governance Assets and Public Spaces to take such action as is necessary in order to assign the leases and sub lease for the remainder of the term as a public open space to Frome Town Council subject to the consent of the Head Landlord, the Frome and District Agricultural Society; 		

	<p>2. To advertise the disposal of the leases under Section 123 of the Local government Act 1972 and refer any objections back to Cabinet for consideration prior to disposal;</p> <p>3. If agreed, to ensure that the Council has no contingent liabilities for the site in the future, and Frome Town Council bear their own legal costs;</p>
Direct and/or indirect impact on service delivery to our customers and communities:	<p>Empowering local communities to have a more direct control of a local asset.</p>
Legal Implications:	<p>Formal landlord's consent from the Frome and District Agricultural Society will need to be attained to assign both leases to Frome Town Council together with the sub lease.</p> <p>The District Council will need to obtain an indemnity from Frome Town Council for all liabilities arising from breaches of the tenant's covenants in the future.</p> <p>Any such disposal will need to be advertised under S123 of the Local Government Act 1972 and any representations duly considered.</p> <p>In any event, covenants in the current leases would mean that future use of the land is restricted public open space for recreational purposes for the benefit of the inhabitants of Frome in accordance with Local Plan policies.</p> <p>There is an undetermined Town and Village Green application on the whole of the site. The District Council has lodged a formal objection and is obliged to support the landlord. The cost and resource liability are likely to remain with the District Council.</p> <p>If the leases are not assigned, the District Council will need to seek formal landlord's consent from the Frome and District Agricultural Society (FDAS) for agreed S.106 works prior to them commencing. If consent is granted, the Section 106 funds can be transferred to the Town Council. Any conditions identified by FDAS would then be included within a licence and funding agreement with the Town Council to ensure satisfactory completion of the works including the appropriate indemnities are in place and that the Town Council is responsible for matters such as planning consent.</p>
Financial Implications:	<p>There are financial costs to the Council in assigning the leases to the Frome Town Council in staff costs and legal fees. The District Council would also be responsible for the legal costs of FDAS. However, there would be annual savings of £14,688 from maintenance costs if the Council transferred the leases.</p> <p>The limited Section 106 monies will only partly fund the identified works. This would need to be re-prioritised with public support within the budget available.</p>
Value for Money:	<p>If the leases are assigned, this will give the Council annual</p>

	budgetary savings on maintenance for this site.
Equalities Implications:	The Showfield site is available for use by all members of the public for recreational purposes. Some of the proposed works identified, such as improvements to paths would enhance accessibility.
Risk Assessment and Adverse Impact on Corporate Actions:	There is a potential risk of ongoing contingent liabilities for the District Council as the original tenant of the two leases which were both signed in 2006. However, it is suggested that this risk is mitigated with an indemnity with the Town Council and also by the effect of the Landlord and Tenant (Covenants) Act 1995, which states that once an original tenant assigns his lease, he no longer has any obligation to the landlord.
Scrutiny Recommendation (if any)	This report has not been considered by Scrutiny.

INTRODUCTION

The District Council is the current tenant at the Frome Showfield site. The site comprises 20 acres under two separate leases with the Frome and District Agricultural Society dated September 2006. The term of the leases is for 99 years on a peppercorn rent. A map is attached as Appendix A to show the extent of the site and the respective leases. Parts of the Showfield are also subject to a sub-lease with the Frome Collegians Football Club.

The Frome Showfield site is recognised as a town park in the adopted Play Strategy. The site is also subject to an undetermined Town and Village Green application to which the District Council has objected.

Policy SN12 of the adopted Mendip Local Plan applies which protects formal and informal open spaces.

Members are asked to consider the potential assignment of the two leases covering the Frome Showfield site to Frome Town Council subject to the consent of the consent of the Frome and District Agricultural Society as the Head Landlord.

BACKGROUND

In September, the Corporate Asset Management Group supported “in principle” the potential transfer of this site following further interest by Frome Town Council.

Frome Town Council has taken a proactive approach to seeking the release of the S106 monies (£44,398 in total) from the development of the health centre. The Town Council prepared a report “Cheesefield quotes and recommended works” identifying works to improve the site based on a public consultation carried out in October.

The key extracts from last October’s public consultation are attached as Appendix B Findings of Public Consultation

Subsequently, Frome Town Council has identified the proposed priority works and their associated funding. There are issues around the proposed expenditure. However, the Town Council have confirmed that the proposed works will be funded solely through the Section 106 budget and that there is no expectation that the District Council will resources these works. One of the ward members would like to ensure that there is public support for the proposed works and clearly some of the works will need to be prioritised to ensure that the works are carried out within the Section 106 budget. A table of the estimated costs of the priorities identified in the public consultation is attached as Appendix C with the Town Council’s suggested funding source.

Frome Town Council is seeking the release of the S106 monies in order to implement the works and those discussions are taking place separately with the Planning team in the usual way.

The tenant Council will need to seek formal landlord consent from the Show Society so that that the identified works can be undertaken.

COSTS OF CURRENTLY MAINTAINING THE SITE AND FOR THE POTENTIAL TRANSFER

It can be seen from the following table that the current annual site maintenance costs for the Council is in the region of £14,688.

<i>Maintenance</i>	<i>Estimated cost per annum</i>	<i>Notes</i>
Current "ecological" grass cutting	£8,005	This is sub contract work so would not have a significant impact on the Core Services contract as a whole
Hedge cutting	£1,822	
Path maintenance	£500	Based on 1000 linear metres of path £5 per metre every 10 years
Ditch Clearance	£200	
Drainage pipe clearance	£200	
Playground grass cutting	£505	
Playground equipment maintenance and inspections	£956	Based on 62 sites costing £59330
Playground capital cost annual depreciation	£2,000	25 year life assumed
Cleaning up after fly-tipping due to breaches of security by travellers groups	£500	This can cost up to £1000 but does not occur every year.
Total reduction in core services contract	£14,688	Annualised cost that includes some capital elements.

Currently, the grass is cut on an ecological basis. However, there is a public desire to alter the mowing regime around the picnic area between the cricket ground and football field including the play area, i.e. the whole of the western part of the Showfield, to amenity grass which would be an additional cost of £2,295 pa. The two eastern fields would remain as ecological cut. There will be an initial cost of £1,150 to level the ground. This would be a matter for Frome Town Council to progress, if appropriate, following the assignment of the leases.

If the mowing regime is altered to an amenity cut, the increased annual maintenance figure saved would be £16,983 per annum

The District Council would incur costs in assigning the leases. The District Council's own legal fees would be in the region of £2,500 and the District Council would be responsible for the Head Landlord's legal costs estimated to be a further £2,500.

THE LEASES

The leases are both for a term of 99 years on a peppercorn rent. They contain a full repairing clause and have a restrictive user clause "to keep the premises as public open space for recreational purposes for the benefit of the inhabitants of Frome". This limits the inherent value of the site. There is some scope for ancillary enhancements on the site so long as it complies with the user clause. The leases can not be assigned nor underlet without the written consent of the head landlord. This consent will not be

“unreasonably withheld in the case of an assignee or under lessee who shall take the residue of the term on a not for profit basis”.

The leases impose liabilities and obligations on the tenant with no ability to release any value from the site.

The position regarding the Book Value and the Market Value of the site is being clarified at the moment and an update paper will be issued to cover those matters.

THE LEGAL POSITION

The Head Landlord, the Frome and District Agricultural Society can withhold consent to any assignment if Frome Town Council are intending to manage the Showfield other than on a not-for-profit basis.

Since the introduction of the Landlord and Tenant (Covenants) Act 1995, once a tenant assigns a lease, there are no longer any ongoing obligations to the landlord. However, it is advisable that the Council obtains an indemnity from Frome Town Council for all liabilities arising from breaches of the tenant's covenants in the future.

The restrictions in the two leases preventing changes of use and any future building or development of the Showfield would remain the same following assignment to the Town Council.

The Assignee must also enter into direct covenants with the Head Landlord.

The outstanding Town and Village Green application does not prevent the assignment of the leases. Frome Town Council would need to be made aware of the application and be provided with all the application documents and the Council's formal objection letter. The Council, as tenant at the time of the application and objection, remains obliged to support the landlord in defending the Town and Village Green application. It is likely that the cost and resource liability will remain with the Council in resisting the application.

There is a necessity to advertise the disposal of the leases under Section 123 and to consider any representations received prior to the assignment of the leases.

Frome Town Council would also need to assume responsibility for the current sub-lease.

The District Council will have to bear its own legal costs in dealing with the assignment, including drafting the assignments of the two leases, answering any enquiries from Frome Town Council and obtaining the Head Landlord's licence to assign. The District Council will also be responsible for the Head Landlord's legal costs.

OPTIONS CONSIDERED

There are a number of other options that have been considered:

1. Continue with the existing arrangements. The maintenance costs associated with the site may continue to rise particularly if there is increasing public pressure to alter the mowing regime. This may well be the situation if the landlords with hold their consent.

2. Surrender the lease. The District Council would need to be satisfied that the park will be maintained and managed to an appropriate standard for the benefit of the local community. Any surrender would have to be agreed by the Head Landlord. It is unlikely that the Head Landlord would consent to this because of the commitment to ongoing maintenance.

RECOMMENDATIONS

It is recommended that members agree to the assignment of both leases to Frome Town Council and;

1. To delegate authority to the Corporate Manager Governance Assets and Public Spaces to take such action as is necessary in order to assign the leases and sub lease for the remainder of the term as a public open space to Frome Town Council subject to the consent of the landlord, the Frome and District Agricultural Society;
2. To advertise the disposal of the leases under Section 123 of the Local Government Act 1972 and refer any objections back to Cabinet for consideration prior to disposal;
3. If agreed, to ensure that the Council has no contingent liabilities for the site in the future and Frome Town Council bear their own legal costs;

REASONS FOR RECOMMENDATIONS

The District Council by assigning the leases to Frome Town Council would not only be enabling empowerment of the local community to manage the facility at the local level but would also make future annual savings on maintenance.

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Appendices :

- A: Site plan showing respective leases.
- B: Key Findings of Public consultation - Extracts from last October's public consultation
- C: Estimated costs of the priorities identified in the public consultation

List of background Papers :

- Plan showing the areas included in the two leases between Frome and District Agricultural Society and Mendip District Council
- Frome Showfield Consultation by Vision for Frome and Frome Town Council (October 2012)
- Cheesefield quotes and recommended works" report by Frome Town Council (May 2013)